

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

ROBERT VAN CLEAVE,

Petitioner,

Civil Action No.  
07-CV-11899

vs.

JEFF WHITE,

PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Respondent.  
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**ORDER**

**(1) ACCEPTING AND ADOPTING THE MAGISTRATE JUDGE’S REPORT AND  
RECOMMENDATION,**

**(2) DENYING PETITIONER’S APPLICATION FOR WRIT OF HABEAS CORPUS,**

**(3) DENYING A CERTIFICATE OF APPEALABILITY, and**

**(4) OVERRULING PETITIONER’S OBJECTIONS**

This is a habeas corpus case. On December 7, 2009, Magistrate Judge Paul J. Komives issued a Report and Recommendation (“R&R”) in which he recommends that Petitioner’s Application for Writ of Habeas Corpus be denied and that a certificate of appealability be denied. Petitioner has filed untimely objections to the R&R; however, the Court has accepted them by separate order. *See* docket entry 22.

The Court reviews *de novo* those portions of the R&R to which a specific objection has been made. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Petitioner raises five objections as follows:

- (1) The Magistrate Judge erroneously concluded that Petitioner’s First Issue—Improper Bolstering was a state evidentiary issue.
- (2) The Magistrate Judge’s report and recommendation fails to address the fundamental unfairness of Petitioner’s first issue, as to whether Petitioner was denied a fair trial as a result of prosecutorial

misconduct when the Prosecutor bolstered the testimony of the Complainant through the testimony of witnesses who had no personal knowledge that Petitioner had sexually assaulted the complainant herein.

- (3) Petitioner objects to the report and recommendation that petitioner is not entitled to habeas relief on his ineffective assistance of counsel claim.
- (4) Petitioner objects to the denial of his request for an evidentiary hearing.
- (5) Petitioner objects to the Magistrate's recommendation of the denial of a Certificate of Appealability.

Having reviewed this matter *de novo*, the Court finds, over Petitioner's objections, that Magistrate Judge Komives has reached the proper conclusions for the proper reasons. With regard to Petitioner's first and second objections, the Court notes that Magistrate Judge Komives discussed whether Petitioner is entitled to habeas relief based on alleged prosecutorial misconduct and correctly concluded that he is not. *See* R&R at 8-10. Further supporting Magistrate Judge Komives' ruling rejecting Petitioner's arguments based on alleged "improper bolstering" of the prosecution's witness is the recent Sixth Circuit decision in *Wilson v. Bell*, No. 09-1480, 2010 WL 785912 (6th Cir. Mar. 9, 2010).

Moreover, Petitioner is not entitled to habeas relief based on ineffective assistance of counsel for the reasons stated by the Magistrate Judge in his R&R. Finally, the Court finds no merit to Petitioner's remaining objections. Accordingly,

IT IS ORDERED that Magistrate Judge Komives' R&R of December 7, 2009, is accepted and adopted as the findings and conclusions of the Court.

IT IS FURTHER ORDERED that Petitioner's objections to the R&R are overruled.

IT IS FURTHER ORDERED that Petitioner's Application for Writ of Habeas Corpus is

denied.

IT IS FURTHER ORDERED that a certificate of appealability is denied.

s/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: March 16, 2010

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on March 16, 2010.

s/Denise Goodine  
Case Manager